



DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OVC) 1539]

RIN 1121-AA78

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Adoption of interim rule as final; technical corrections.

SUMMARY: The Office for Victims of Crime (“OVC”) is promulgating this final rule for its International Terrorism Victim Expense Reimbursement Program (“ITVERP”), in order to finalize the interim final rule published on April 11, 2011, which removed a regulatory limitation on the discretion of the Director of OVC to accept claims filed more than three years after the date that an incident is designated as an incident of international terrorism. This final rule also makes non-substantive technical corrections to update citations to reflect the current location of the cited provisions.

DATES: This final rule is effective [insert date of publication in the Federal Register].

ADDRESSES: For further information, see the ITVERP website at

<http://www.ojp.usdoj.gov/ovc/intdir/itverp>.

FOR FURTHER INFORMATION CONTACT: Victoria Jolicoeur, ITVERP, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, D.C. 20531; (202) 307-5134.

SUPPLEMENTARY INFORMATION:

I. Background

ITVERP is a Federal program that provides reimbursement to nationals of the United States and Federal Government employees (and certain family members of such individuals, under some circumstances), who are victims of international terrorism and who incur expenses as a result of such incidents. For further information, see the ITVERP website at <http://www.ojp.usdoj.gov/ovc/intdir/itverp>.

Pursuant to 34 U.S.C. 20106 and 34 U.S.C. 20110(a), OVC promulgated an interim-final rule to provide the Director of OVC with express discretionary authority to accept claims filed more than three years after the date that an incident is designated as one of international terrorism. Largely owing to considerations of administrative convenience, the original ITVERP rule (promulgated in 2006) among other things limited the period within which OVC would entertain waivers of claim-filing deadlines. In 2011, based on experience administering the program since it went into effect in 2006, OVC determined that this limit on waivers of late claims could lead to denials of reimbursement for victims with otherwise meritorious claims, even under circumstances where tolling of the deadline would be justified.

This rule adopts as final the interim rule published April 11, 2011, at 76 FR 19909, which allows the Director of OVC to toll or extend the deadline for a late-filed claim where the Director finds good cause to do so. In the ordinary course, a showing of good cause generally requires that the claimant submit a written explanation – satisfactory to the Director – for missing the deadline. Generally speaking, examples of good cause might include situations such as where a victim's treatment for injuries sustained in an incident were covered initially by collateral sources, but these sources later become unavailable after the filing deadline has expired; where outreach to overseas claimants has not been effective; and where a claimant's extended illness, living abroad in remote areas for extended periods of time, or barriers to accessing information about the program led to the late filing. Absent circumstances consonant with the foregoing, good cause would not exist; thus, for example, a claimant's missing the deadline due to mere inattentiveness to the program's deadlines would not be sufficient to

establish good cause.

The interim final rule did not alter any then-existing regulatory deadlines, nor did it impose any new deadlines (or any burden whatsoever) on claimants, but instead merely operated to relieve an administrative restriction, in the then-existing rule, on claim filing (such rule having been promulgated largely for the administrative convenience of OVC, which had found it, over the course of four years of program administration, to be unnecessary). In these respects, the final rule is the same.

OVC had intended to finalize this interim-final rule as part of a larger revision of the program rules shortly after publication of the interim-final rule, but that effort ended up not moving forward. Other priorities, including updating program rules for the Victims of Crime Act of 1984 (“VOCA”) Victim Assistance Program, and administration and oversight responsibilities relating to the substantial increase in VOCA funding that started in FY 2015, took priority after that.

The non-substantive updates to the citations are to ensure that the citations accurately point to the substantive provision originally intended when subpart A was promulgated in 2006, and when subpart B was promulgated in 2016. In 2017, many citations to provisions in Title 42 of the United States Code were reclassified to Title 34. In addition, 2 CFR part 200 was amended in 2020, and certain sections were shifted by one number. The updates herein adjust the citations to reflect the new locations of the same substantive provisions.

III. Regulatory Requirements

Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, “Regulatory Planning and Review,” section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, “Improving Regulation and Regulatory Review” section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if

regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

OVC has determined that this final rule is not a “significant regulatory action” under Executive Order 12866, Regulatory Planning and Review, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This rule finalizes the 2011 interim final rule, which OVC also determined was not a “significant regulatory action,” without change.

Cost/Benefit Assessment

This regulation has no cost to state, local, or tribal governments, or to the private sector. It merely alleviates an administrative restriction on victim claim filing by permitting the OVC Director to allow late filing where the Director determines that this is appropriate. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, which is capped at \$50 million in any given year. The cost to the Federal Government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. This rule is not expected to significantly increase the number of eligible claimants, and therefore OVC has determined that the negligible cost potentially associated with allowing certain late-filed claims to be processed is outweighed by considerations of fairness in the program’s administration and the benefit of ensuring that U.S. victims otherwise eligible for, and in need of, reimbursement for injuries and losses from overseas terrorism are provided such reimbursement. This rule has not, and is not expected to, materially increase the overall budgetary impact of the ITVERP.

Administrative Procedure Act

This rule concerns matters relating to “grants, benefits, or contracts,” 5 U.S.C.

553(a)(2). It is therefore statutorily exempt from the requirement of notice and comment and a 30-day delay in the effective date. Moreover, to the extent that it “recognizes an exemption or relieves a restriction” on claimant filing, it is exempt from the 30-day delay in the effective date per 5 U.S.C. 553(d). Moreover, with regard to the citation corrections, OVC finds that notice and comment would be unnecessary because the citation updates are non-substantive – the underlying substantive provisions remain the same, and therefore good cause exists to dispense with notice and comment per 5 U.S.C. 553(b)(B), and a delayed effective date, pursuant to 5 U.S.C. 553(d).

Although it was not required to do so, upon publication of the interim-final rule in 2011, OVC provided for post-promulgation public comment. OVC received two comments, one of which was not responsive. The only responsive comment advocated for a statutory-definition change beyond the scope of this rulemaking, questioned the cost of the program, requested that information about payments be posted on the internet, and opposed “paying claims that are more than 3 years old and leaving that to the ‘discretion’ [sic] of the director” OVC does, in fact, post detailed information on its website about program payments, with breakouts by number of claims, amounts paid in each expense category, and other claim processing information, and has done so since 2008. Moreover, the Director’s discretion is limited to situations where a claimant shows good cause to waive the filing deadline. For example, in FY 2018, of the 36 new applications received during the reporting period, 4 were granted an extension; in FY 2019, of 33 new applicants, 1 was granted an extension. ITVERP is a very small program, both in terms of number of claims and amounts paid. It received an average of 35 claims per year from FY 2011 through FY 2019. The total amount paid for *all* claims added together in the FY 2017 reporting period was \$264,734.07; in FY 2018 was \$145,046, and in FY 2019 was \$155,298. Consequently, the entire program has a de-minimis budgetary impact, and the limited number of extensions granted each year do not materially change that.

This rule finalizes that interim-final rule, which made a minor amendment to alleviate a

procedural restriction on ITVERP claimants that might otherwise have led to the denial of meritorious claims from victims, even where such victims show good cause for delayed filing.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No. 13132, 64 FR 43255 (Aug. 4, 1999), it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform.”

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation has no cost to State, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of this regulation on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

This proposed rule contains no new information collection or record-keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures, International terrorism, Victim compensation.

Accordingly, for the reasons set forth in the preamble, the Office of Justice Programs adopts the interim rule published April 11, 2011, at 76 FR 19909, as final without change and makes technical corrections to title 28, part 94 of the Code of Federal Regulations as follows:

PART 94—CRIME VICTIM SERVICES

1. The authority citation for part 94 is revised to read as follows:

Authority: 34 U.S.C. 20103, 20106, 20110(a), 20111.

Subpart A—International Terrorism Victim Expense Reimbursement Program

§ 94.11 [Amended]

2. Amend § 94.11 in paragraph (a) by removing “42 U.S.C. 10603c” and adding in its place “34 U.S.C. 20106”.

§ 94.12 [Amended]

3. Amend § 94.12 in paragraph (u) introductory text by removing “42 U.S.C. 10603c(a)(3)(A)” and adding in its place “34 U.S.C. 20106(a)(3)(A)”.

§ 94.21 [Amended]

4. Amend § 94.21 in paragraph (a) by removing “42 U.S.C. 10603c(a)(3)(A)” and adding in its place “34 U.S.C. 20106(a)(3)(A)”.

Subpart B – VOCA Victim Assistance Program

§ 94.101 [Amended]

5. Amend § 94.101 in paragraph (a) by removing “42 U.S.C. 10603” and adding in its place “34 U.S.C. 20103” and in paragraph (b) by removing “42 U.S.C. 10604(a)” and adding in its place “34 U.S.C. 20110(a)”.

§ 94.102 [Amended]

6. Amend § 94.102, in introductory text of the definition of *Direct services* or *services to victims of crime*, by removing “42 U.S.C. 10603(d)(2)” and adding in its place “34 U.S.C. 20103(d)(2)”.

§ 94.103 [Amended]

7. Amend § 94.103 in paragraph (b) introductory text by removing “42 U.S.C. 10603(a)(2)” and adding in its place “34 U.S.C. 20103(a)(2)” and in paragraph (g) by removing “2 CFR 200.336” and adding in its place “2 CFR 200.337”.

§ 94.104 [Amended]

8. Amend § 94.104 in paragraph (b) introductory text by removing “42 U.S.C. 10603(a)(2)(A)” and adding in its place “34 U.S.C. 20103(a)(2)(A)” and in paragraph (c) by removing “42 U.S.C. 10603(a)(2)(B)” and adding in its place “34 U.S.C. 20103(a)(2)(B)”.

§ 94.106 [Amended]

9. Amend § 94.106 in paragraph (a) by removing “2 CFR 200.331” and adding in its place “2 CFR 200.332”.

§ 94.107 [Amended]

10. Amend § 94.107 in paragraph (a) by removing “42 U.S.C. 10603(b)(3)” and adding in its place “34 U.S.C. 20103(b)(3)”.

§ 94.108 [Amended]

11. Amend § 94.108 in paragraph (b)(2) by removing “42 U.S.C. 10604(h)” and adding in its place “34 U.S.C. 20110(h)”.

§ 94.111 [Amended]

12. Amend § 94.111 by removing “42 U.S.C. 10603(b)(1) and adding in its place “34 U.S.C. 20103(b)(1)”.

§ 94.112 [Amended]

13. Amend § 94.112 in paragraph (b) introductory text by removing “42 U.S.C. 10603(b)(1)(B)” and adding in its place “34 U.S.C. 20103(b)(1)(B)”.

§ 94.113 [Amended]

14. Amend § 94.113 in paragraph (b) by removing “42 U.S.C. 10603(b)(1)(C)” and adding in its place “34 U.S.C. 20103(b)(1)(C)”.

§ 94.114 [Amended]

15. Amend § 94.114 in paragraphs (a) and (b) by removing “42 U.S.C. 10604(e)” and adding in its place “34 U.S.C. 20110(e)”.

Dated: January 11, 2023.

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for Operations and Management
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